

# SENATE BILL No. 373

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-18-2; IC 16-41; IC 16-42-25; IC 35-42-1-7; IC 35-42-1-8; IC 35-42-1-9.

**Synopsis:** Duty to warn about AIDS and related matters. Defines "carrier" and "risk counseling". Relocates AIDS crimes from the Indiana Code chapter concerning homicide to the Indiana Code title concerning health. Makes the reckless, knowing, or intentional failure to warn a sexual or needle sharing partner about a person's status as an AIDS, HIV, or Hepatitis B carrier: (1) a Class B misdemeanor for first time offenders; and (2) a Class D felony when the carrier is a repeat offender. Provides standards to govern when a person has a duty to warn. Makes other related changes.

**Effective:** July 1, 1999.

**Simpson**

January 11, 1999, read first time and referred to Committee on Judiciary.



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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## SENATE BILL No. 373

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 16-18-2-49 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 49. "Carrier" **has the**  
3 **following meaning:**

4 (1) **Except as provided in subdivisions (1) and (2),** for purposes  
5 of IC 16-41, "**carrier**" means a person who:

6 (A) **is a carrier (as defined in IC 16-41-7-1);**

7 (B) has (+) tuberculosis in a communicable stage; or

8 (2) (C) **has** another dangerous communicable disease.

9 (2) **For purposes of IC 16-41-7, IC 16-41-13-7, and**  
10 **IC 16-41-14-21, "carrier" has the meaning set forth in**  
11 **IC 16-41-7-1.**

12 (3) **For purposes of IC 16-41-35-39, "carrier" refers to a**  
13 **carrier of nuclear waste.**

14 SECTION 2. IC 16-18-2-66.3 IS ADDED TO THE INDIANA  
15 CODE AS A **NEW SECTION** TO READ AS FOLLOWS  
16 [EFFECTIVE JULY 1, 1999]: Sec. 66.3. "**Component**", for the  
17 **purposes of IC 16-41-13-7, has the meaning set forth in**



1 **IC 16-41-13-7.**

2 SECTION 3. IC 16-18-2-170 IS AMENDED TO READ AS  
 3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 170. "High risk  
 4 activity", for purposes of IC 16-41-7, has the meaning set forth in  
 5 ~~IC 16-41-7-1(b)~~. **IC 16-41-7-1.**

6 SECTION 4. IC 16-18-2-275 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 275. (a) "Person at  
 8 risk", for purposes of IC 16-41-7-4, has the meaning set forth in  
 9 IC 16-41-7-4(a).

10 (b) "Person at risk", for purposes of IC 16-41-7-1, **IC 16-41-7-2**, and  
 11 IC 16-41-7-3, has the meaning set forth in ~~IC 16-41-7-1(c)~~.  
 12 **IC 16-41-7-1.**

13 SECTION 5. IC 16-18-2-319.5 IS ADDED TO THE INDIANA  
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 15 [EFFECTIVE JULY 1, 1999]: **Sec. 319.5. "Risk counseling", for**  
 16 **purposes of IC 16-41, has the meaning set forth in IC 16-41-7-1.**

17 SECTION 6. IC 16-41-7-1 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) This section  
 19 applies to the following dangerous communicable diseases:

- 20 (1) Acquired immune deficiency syndrome (AIDS).
- 21 (2) Human immunodeficiency virus (HIV).
- 22 (3) Hepatitis B.

23 (b) **"Carrier" means a person who has:**

- 24 (1) **been diagnosed as having a dangerous communicable**
- 25 **disease described in subsection (a); and**
- 26 **(2) received risk counseling.**

27 ~~(b) (c) As used in this section, "High risk activity" means sexual or~~  
 28 ~~needle sharing contact that has been demonstrated epidemiologically~~  
 29 ~~to transmit a dangerous communicable disease described in subsection~~  
 30 ~~(a).~~

31 ~~(c) (d) As used in this section, "Person at risk" means:~~

- 32 (1) past and present sexual or needle sharing partners who may
- 33 have engaged in high risk activity; or
- 34 (2) sexual or needle sharing partners before engaging in high risk
- 35 activity;

36 ~~with the carrier of a person who has been diagnosed as having a~~  
 37 ~~dangerous communicable disease described in subsection (a). The~~  
 38 ~~term does not include a person who has allegedly committed rape~~  
 39 ~~under IC 35-42-4-1, criminal deviate conduct under IC 35-42-4-2,~~  
 40 ~~child molesting under IC 35-42-4-3, child solicitation under~~  
 41 ~~IC 35-42-4-6, child seduction under IC 35-42-4-7, sexual battery~~  
 42 ~~under IC 35-42-4-8, or sexual misconduct with a minor under~~



1 **IC 35-42-4-9.**

2 (e) "Risk counseling" means that a person has been:

3 (1) notified in person that tests have confirmed the presence  
4 of antibodies to the human immunodeficiency virus (HIV) or  
5 Hepatitis B virus in the person's blood;

6 (2) counseled regarding:

7 (A) behaviors demonstrated epidemiologically as  
8 transmitting a dangerous communicable disease described  
9 in subsection (a); and

10 (B) methods demonstrated epidemiologically as preventing  
11 or reducing transmission of a dangerous communicable  
12 disease described in subsection (a); and

13 (3) informed about the person's duty to warn under  
14 subsection (f).

15 (d) (f) Carriers who know of their status as a carrier of a dangerous  
16 communicable disease described in subsection (a) have a duty to warn  
17 or cause to be warned by a third party a person at risk of the following:

18 (1) The carrier's disease status.

19 (2) The need to seek health care such as counseling and testing.

20 SECTION 7. IC 16-41-7-5 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) ~~Except as~~  
22 ~~otherwise provided, A person carrier~~ who recklessly, **knowingly, or**  
23 **intentionally** violates or fails to comply with this chapter commits a  
24 Class B misdemeanor.

25 (b) Each ~~day a violation continues~~ constitutes a separate offense.

26 SECTION 8. IC 16-41-7-6 IS ADDED TO THE INDIANA CODE  
27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
28 1, 1999]: Sec. 6. (a) A carrier who:

29 (1) recklessly, knowingly, or intentionally violates or fails to  
30 comply with section 1 of this chapter; and

31 (2) has a previous unrelated conviction for a violation of  
32 section 5 of this chapter, this section, IC 16-41-13-7,  
33 IC 16-41-14-21, IC 35-42-1-7 (before its repeal), IC 35-42-1-9  
34 (before its repeal), or an offense under the laws of the United  
35 States or another state that is substantially similar to an  
36 offense described in section 5 of this chapter, this section, or  
37 IC 16-41-13-7;

38 commits a Class D felony.

39 (b) Each violation described in this section constitutes a separate  
40 offense.

41 SECTION 9. IC 16-41-13-7 IS ADDED TO THE INDIANA CODE  
42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 1999]: Sec. 7. (a) This section does not apply to:

(1) a person who, for reasons of privacy, donates, sells, or transfers blood or a blood component at a blood center after the person has notified the blood center that the blood or blood component must be disposed of and may not be used for any purpose; or

(2) a person who transfers blood, a blood component, or another body fluid that contains the human immunodeficiency virus (HIV) for research purposes.

(b) As used in this section, "component" means plasma, platelets, or serum of a human being.

(c) A carrier who recklessly, knowingly, or intentionally donates, sells, or transfers blood or a blood component that contains the human immunodeficiency virus (HIV) commits transferring contaminated blood, a Class C felony.

(d) However, the offense is a Class A felony if it results in the transmission of the human immunodeficiency virus (HIV) to any person other than the defendant.

SECTION 10. IC 16-41-14-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 21. (a) This section does not apply to a person who transfers semen or another body fluid that contains the human immunodeficiency virus (HIV) for research purposes.

(b) A carrier who recklessly, knowingly, or intentionally donates, sells, or transfers semen for artificial insemination that contains the human immunodeficiency virus (HIV) commits transferring contaminated semen, a Class C felony.

(c) However, the offense is a Class A felony if it results in the transmission of the human immunodeficiency virus (HIV) to any person other than the defendant.

SECTION 11. IC 16-42-25 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

#### Chapter 25. AIDS Home Testing Kits

##### Sec. 1. The sale or distribution of:

(1) diagnostic testing equipment or apparatus; or

(2) a blood collection kit;

intended for home use to diagnose or confirm human immunodeficiency virus (HIV) infection or disease is prohibited unless the testing equipment, apparatus, or kit has been approved for use by the federal Food and Drug Administration.



1       **Sec. 2. A person who violates section 1 of this chapter commits**  
2       **a Class A misdemeanor.**

3       SECTION 12. THE FOLLOWING ARE REPEALED [EFFECTIVE  
4       JULY 1, 1999]: IC 35-42-1-7; IC 35-42-1-8; IC 35-42-1-9.

5       SECTION 13. [EFFECTIVE JULY 1, 1999] **A felony or**  
6       **misdemeanor committed under IC 35-42-1-7, IC 35-42-1-8, or**  
7       **IC 35-42-1-9 before July 1, 1999, may be prosecuted and remains**  
8       **punishable as provided in IC 35-42-1-7, IC 35-42-1-8, and**  
9       **IC 35-42-1-9 as effective before their repeal by this act. This act**  
10       **does not affect penalties incurred or proceedings begun before July**  
11       **1, 1999.**

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